

## **REMARKS**

With the present Amendment, claims 1-5, 7-22 and 24 are pending. Claims 1-5, 7-22, and 24 stand rejected under 35 U.S.C. § 103 as being unpatentable over Thomas et al. (U.S. Patent No. 6,049,024) in view of Goldwasser (U.S. Patent No. 6,183,847 B1) and Kellenberger (U.S. Patent No. 5,147,343).

Claims 1-5, 7-22, and 24 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16, 18-30, and 32 of copending U.S. Patent Application No. 10/657,622. Without commenting on the propriety of this provisional rejection, Applicants are in the process of preparing a terminal disclaimer, which will be filed in upon indication of allowance of the application, with respect to the 10/657,498 Application, pursuant to 37 CFR § 1.321(c).

Applicants respectfully request that this response be entered. Applicants respectfully submit that the response places the application in condition for allowance or in better condition for appeal, as discussed in greater detail below.

Claim 1 is not anticipated by the cited prior art of Thomas et al., Goldwasser, and Kellenberger, either alone or in combination, because these references do not set forth all the limitations and elements of the claim. For example, claim 1 calls for a disposable garment with a liquid impervious backsheet, liquid pervious nonwoven fabric laminate, and an absorbent material disposed between the liquid pervious nonwoven laminate and the liquid impervious backsheet. The liquid pervious nonwoven laminate includes a layer

of fine fibers. The layer of fine fibers has an average pore size that is less than the average diameter of absorbent articles that are included in the absorbent material.

As stated in the response to the Office Action dated February 8, 2005, neither Thomas et al. nor Goldwasser disclose a liquid pervious nonwoven fabric laminate having an average pore size that is less than the average diameter of the absorbent particles of the absorbent material which is disposed between the nonwoven fabric laminate and the backsheet.

Kellenberger discloses a disposable sanitary absorbent article 10 having a liquid impermeable backing material 12, a liquid permeable facing material 14, and a liquid absorbent composite 16. Kellenberger discloses that the absorbent material 16 is made up of a matrix of fibers and superabsorbent material. Therefore, the superabsorbent material is included within a batting of fibers. Such a composition of absorbent material is similar to that of coform, which is disclosed in the present application. The absorbent composite 16 of the superabsorbent material and fibers holds and contains any liquid that comes in contact with the composite 16. Therefore, the absorbent composite 16 of Kellenberger is similar to the absorbent material called for independent claim 1. The absorbent composite of Kellenberger would be used as the absorbent material in the present claim 1 and not as a liquid impervious nonwoven fabric laminate. Kellenberger does not disclose that the liquid pervious facing material 14, which covers the absorbent composite 16, should have an average pore size

in one of its layers that is less than the average diameter of the absorbent particles contained within the absorbent composite 16.

Kellenberger at best only teaches that the absorbent core of an absorbent article should be a matrix of fibers and superabsorbent material. Kellenberger does not disclose, teach, or suggest that the liquid permeable sheet of Thomas et al. (or any other absorbent article), which allows liquid to pass, should have a layer of fine fibers with an average pore size less than the average diameter of the absorbent particles within the absorbent composite 16. Therefore, even if Kellenberger was combined with Thomas et al. and Goldwasser such a combination would have a modified absorbent core and would not render independent claim 1 obvious.

Applicants respectfully submit that, absent knowledge of the present application, it is not reasonable to use a reference (such as Kellenberger) that teaches of a unique absorbent core material to modify the pore size of the cover sheet of a different absorbent article, particularly when the reference explicitly states that the SAP particles are adequately retained in the fiber matrix of the absorbent core (as noted by the Examiner). Kellenberger expressly describes the retaining of the superabsorbent material particles within the fiber matrix of the absorbent core by ensuring that the particle size is larger than the interfiber spaces. There is no indication that this structure is inadequate, or that additional solutions are needed. The absorbent article of Kellenberger also includes a liquid permeable cover sheet, and there is not suggestion or hint whatsoever in the reference that this cover should be modified to retain the superabsorbent

material particles. As noted by the Examiner, the other applied references offer no motivation whatsoever to change their respective cover sheets to retain superabsorbent material particles. If Kellenberger does not suggest that its own cover sheet should be modified, it is not reasonable to assert that Kellenberger provides motivation to modify the cover sheet of another absorbent article. Absent knowledge of the present application and impermissible hindsight analysis, the obviousness combination is improper.

Similarly, the combination of Thomas et al., Goldwasser, and Kellenberger would not render independent claim 16 obvious. Independent claim 16 calls for a nonwoven fabric laminate that consists essentially of a first layer of spunbonded fibers, a second layer of spunbonded fibers and a layer of meltblown fibers disposed between the first layer of spunbonded fibers and the second layer of spunbonded fibers. The layer of meltblown fibers has pore sizes of less than about 25 microns and the nonwoven fabric laminate has a SAM retention level of greater than 95% using the SAM Shake Test.

As stated in the response to the Office Action dated February 8, 2005, Thomas et al. and Goldwasser do not disclose a layer of meltblown fibers having a pore size of less than about 25 microns and wherein a nonwoven fabric laminate has a SAM retention level of greater than 95% using the SAM Shake Test. Kellenberger does not teach making a layer of meltblown fibers within a SMS fabric laminate. Rather, as stated above, Kellenberger describes making an absorbent composite of a matrix of fibers and superabsorbent material that is similar to coform for use within a diaper or other absorbent article. Such a

construction as called for in Kellenberger would not be useful within a SMS layer especially when the basis weight ranges of the meltblown fibers are between 0.6 grams per square meter and about 1 gram per square meter. Such a small amount of meltblown fibers would not be able to construct the absorbent composite called for Kellenberger. As pointed out in Kellenberger, the fibrous matrix would most likely be an air laid batting of fluff. Such a batting would have a much larger basis weight than is called for in the meltblown fibers of claim 16.

Further, Kellenberger is describing an absorbent composite that absorbs the fluid therein. The absorbent composite 16 does not just allow liquid to pass through it. Therefore, such a construction would absorb the liquid during the SAM Shake Test, instead of allowing the liquid to pass through. Therefore, one of ordinary skill in the art would not look to Kellenberger to be combined with Thomas et al. and Goldwasser to create a nonwoven fabric laminate has a SAM retention level of greater than 95% using the SAM Shake Test. Therefore, Applicants respectfully submit that the combination of Thomas et al., Goldwasser, and Kellenberger will not render independent claim 16 obvious.

For the reasons set forth above, independent claims 1 and 16 are patentably distinguishable from the cited prior art and are thus allowable. Since claims 2-5 and 7-15 depend from claim 1 and claims 17-22 and 24 depend from claim 16, Applicants respectfully submit that claims 2-5, 7-15, 17-22 and 24 are also allowable. Applicants submit that the application is now in condition for allowance and favorable action thereon is respectfully requested. The Examiner

is encouraged to contact the undersigned at her convenience to resolve any remaining issues.

Respectfully submitted,

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